IN THE

Supreme Court of the United States

October Term, 1956.

George Pope, George Hayes, J. Ewart Viguet, Guardians, Charles H. Richards, Petitioners,

v.

The United States of America, Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

MEMORANDUM FOR PETITIONERS, BY PERMISSION OF THE COURT.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1926.

No. 312.

GEORGE FORD, GEORGE HARRIS, J. EVELYN VINCENT QUARTARARO, CHARLES H. BELANGER, *Petitioners,*

v.

THE UNITED STATES OF AMERICA, *Respondent.*

CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

MEMORANDUM FOR PETITIONERS, BY PERMISSION OF THE COURT.

Neither the *Quadra* nor her crew is shown by this record ever to have come within three miles of the coast of the United States or any of its possessions.

Neither is it by this record shown that either the *Quadra* or her crew at any time unladed any intoxicating liquors within twelve miles of or within one hour's sailing by any vessel from the shores of the United States or its possessions. The conclusion of fact, therefore, at page 11 (see page 13 also) of the Government's brief that "The *Quadra* was loaded with liquor, she was only 5.7 miles out * * * a motor boat *was observed* actually removing liquor from her * * *," in so far as it may convey the impression that she was unlading liquor at a point 5.7 miles out is not supported by the record. The state of facts shown by the record is accurately set forth on pages 4 and 5 of the Government's brief. The testimony of George Harris (R. 339) when read in its entirety shows that what he meant by "outside of the Farallones" referred to the whole distance traversed by the *Quadra* from the 16th of September until the 12th of October (R. 340) and was not related to the point 5.7 miles out from the Farallones. The testimony of Commander Howell (R. 94), the Coast Guard officer who made the seizure, and first "observed" the C-55, that "As I rounded the port side of the *Quadra* I *saw* the motor boat C-55, which is about 45 or 50 feet long and run by a gas-engine. She was steaming from the side of the *Quadra*, headed off-shore, *at a distance from the Quadra of about* 200 *yards,*" completely refutes the statement that the *Quadra* "was observed" unlading liquors into the C-55 at that point. The fact that Commander Howell, the seizing officer, in the sole affidavit before the court on the part of the Government in opposition to the motion to suppress the evidence seized, (R. 42) justified the seizure upon the sole ground "that at said time and said place said motor boat C-55 was *trans-*

porting intoxicating liquor * * and said Steamship *Quadra was transporting intoxicating liquor* * * *," negatives the existence of any evidence of *unlading* from the *Quadra* into the C-55.

This record, therefore, does not show that either the *Quadra* or her crew ever unladed liquor either within the three-mile zone or within the twelve-mile zone or within one hour's sailing by any vessel from the shores of the United States. The record shows that the *Quadra* was seized for "transporting liquors." (R. 40.) Standing between the three-mile and twelve-mile or hour's sailing limit loaded with but not unlading liquors, the *Quadra* violated no law of the United States. Cunard S. S. Co. v. Mellon, 262 U. S. 100. Neither was her cargo "contraband." Lee v. U. S., Vol. 14 (2d) Fed. Rep. 400-405. Nor is there any evidence in this record that at the time and place the *Quadra* was seized, she had "committed, or was committing, or attempting to commit" an offense against the laws of the United States "prohibiting the importation of alcoholic beverages," within Section 2 of the treaty. The point is emphasized not for the purpose of here contending this seizure unlawful, but for the purpose of later herein discussing the application of the treaty.

The seizure was made under the authority of the Treaty with Great Britain of May 22, 1924, the ship and crew brought into the jurisdiction of the United States under authority of said treaty, the United States District Court for the Northern District of California assumed jurisdiction of the case expressly under authority of the treaty, and the Government in this court supports its case under authority of the treaty. Whether, therefore, the seizure was legal or illegal

in the first instance does not relieve the Government from being bound by and it does not disclaim action under the terms of the treaty in justifying the seizure and maintaining the jurisdiction of the court in adjudicating with reference to the ship and the persons of its officers. Such a case done under color of treaty does not come within Ker v. Illinois, 119 U. S. 437. This court in that case at pages 442-443 excluded such a case from its decision, saying:

> "In the case before us, the plea shows, that, although Julian went to Peru with the necessary papers to procure the extradition of Ker under the treaty, those papers remained in his pocket and were never brought to light in Peru; that no steps were taken under them; and that Julian, in seizing upon the person of Ker and carrying him out of the territory of Peru into the United States, did not act nor profess to act under the treaty. In fact, the treaty was not called into operation and was not relied upon, was not made the pretext of arrest, and the facts show that it was a clear case of kidnapping within the dominions of Peru, without any pretence of authority under the treaty or from the government of the United States."

The Government having asserted and maintained jurisdiction under, and the seizure and adjudication having been had and made by virtue of the authority of the treaty whether legally exercised or not, the treaty, as stated in United States v. Rauscher, 119 U. S. 415, became the exclusive rule of action in this and such cases. Therein the court said, speaking of the extradition treaty of 1842 and acts supplemental thereto, "These treaties are also supplemented by acts of Congress, and both are in their nature exclusive."

This treaty expressly refers to the National Prohibi-

tion Act as the law the enforcement of which it is calculated to aid. The treaty and the National Prohibition Act, therein expressly referred to and therefore made part thereof, therefore, in such cases became the exclusive rule of action, defining and limiting the rights of all things and persons subject thereof upon the conditions therein stated, limiting and defining the jurisdiction of the courts accordingly.

This treaty under the rule of Head Money cases, 112 U. S. 580, is a self-executing treaty and therefore a part of the municipal law of the United States.

Being a treaty law, its construction under decisions of this court is ruled as follows:

"—treaties, like statutes, must *rest on words*—nothing added thereto, nothing diminishing." Leavenworth, etc.; R. R. Co. v. United States, 92 U. S. 733; "—the enumeration of certain powers with respect to a particular subject-matter *is a negation* of all other analogus powers with respect to the same subject-matters." "—it is manifestly not desirable to extend them *by any implications;* the presumption is that, having expressed the same, we have expressed all the conditions by which they intend to be bound under the instrument." Ex parte McCardle, 7 Wallace 506; "—This court does not possess any treaty-making power. That power belongs by the Constitution to another department of the Government, and to alter, amend, or add to any treaty, *by inserting any clause, whether small or great, important or trivial,* would be, on our part an assertion of power and not an exercise of judicial functions." Judge Story in *The Amiable Isabel,* 6 Wheaton 1. "—It is well settled that in case of a conflict between an act of Congress and a treaty—each being equally the supreme law of the

land—*the one last in date must prevail in the courts.*" Hijo v. United States, 194 U. S. 315-324.

Upon proclamation of this treaty there was completed the three separate and distinct classes of law invoked by the Government in this case: the Customs Laws, the Criminal Code, and the National Prohibition Act, which last, together with the treaty of May 22, 1924 (United States v. Rauscher, 119 U. S. 407), constituted an exclusive code upon the subject-matters therein included. For the enforcement of each of these classes of laws, separate and distinct search and seizare provisions are by law provided. A seizure made under the provisions of one of these classes of law providing for the enforcement thereof is not a legal seizure for the enforcement of another of these classes of law. If the search and seizure provisions of the Tariff Act of 1922, Section 581 exercisable within four leagues from our shore were deemed applicable to the enforcement of the Prohibition laws upon the high seas beyond the three-mile limit there would be no necessity for this treaty providing a method of seizure expressly related to the enforcement of the prohibition laws on the high seas within the same fixed limitations. Nor would it have been necessary for Congress in the National Prohibition Act to have expressly made the search and seizure provisions of the criminal code and other express provisions applicable to such laws. So also with the Internal Revenue laws and their enforcement provisions.

So that evidence procured in this case by the seizure made under and by virtue of the treaty for the enforcement of the Prohibition Laws of the United States is not admissible for the enforcement of the provisions of the Criminal Code of the United States. Evidence

seized therefore from the *Quadra* by virtue of the treaty law was not admissible in a proceeding under the Criminal Code and Sec. 37 thereof. United States v. Sagitand, 2 F. (2nd) 788.

Bearing in mind the aforesaid well-established rules of treaty construction, and the relationship of this treaty law with cognate provisions of our municipal laws, it seems inescapable that the word "vessel" where used in this treaty was intended to include, and includes only, the vessel, *its* boats and equipment for the purposes of the voyage. The legal amplitude of the word as established by this court has heretofore been quoted. Manila Prize Cases, 188 U. S. 254-268.

Invoking another well-established rule of statutory construction, by examination of the statutes *in pari materia,* the same conclusion is reached. Thus, in the earliest Hovering Act of March 2, 1799, (1 Stat. 627) sections 27, 28, and 50 thereof, which later became sections 2867, 2868, 2872, 2873 and 2874 of the Revised Statutes, and still later sections 586 and 587 of the Tariff Act of 1922 (42 Stat. 858, 989) the seizure of "vessels" is provided. In the same statutes at frequent intervals seizure of the "master," and, in instances of "those on board," are provided. Congress, since the foundation of the Government, has been meticulously careful to expressly provide in all of its legislative enactments whenever it intended the master or others on board of a vessel, the seizure of whom was authorized, should also be amenable to the law, to expressly designate not only the particular persons that might be seized but also the punishment that might be inflicted when they were brought into the jurisdiction of the United States.

In the treaty before us the same meticulous care is

exercised. In Section 1 of the treaty Congress speaks of both the "vessel" and "those on board." Thereby it is shown that in this treaty Congress distinguished between the vessel and those on board and that when it intended this law to apply to both it used *words* to express that purpose. Having all of these words and subjects in mind and before them, the pourparlers proceeded to draw Section 2 of the treaty, omitting therefrom the words "those on board." There can be no contention in this status that Congress did not have in mind those on board as well as the vessel, and obviously the omission of the words "those on board" in Section 2 was industriously done. Therefore, to construe Section 2 to include the master and others of those on board, it becomes necessary for us to read into that paragraph, after the word "vessel," the words "and those on board," contrary to the legal force and effect given the word "vessel" by this court, contrary to the manifest purposes of the makers of this treaty, and contrary to the legislative means employed by Congress in all statutes *in pari materia* for all time to and including the legislative enactment of this treaty law.

When we turn to Article IV of the treaty, we find another legislative interpretation of the word "vessel" herein employed and particularly that in section 2 of Article II it was not intended to conclude those on board, for in said Article IV the right of recovery for loss suffered by improper or unreasonable exercise of the rights conferred by Article II of the treaty is confined solely to the "British vessel." It will hardly be contended that the right of recovery given a vessel may be held to include those on board of the vessel which may or may not be confined to the officers or

crew of the vessel. Can it for a minute be assumed and decreed that the British pourparlers were willing to have compensation renderd to the vessel and not to its subjects? Were the subjects intended to be included in Section 2 of Article II and be placed upon trial and suffer injury and loss without damages for a wrongful seizure while being awarded the vessel only?

It is claimed by the Government that reading the word "vessel", as first appearing in said sub-section, in connection with the later words "for adjudication," by implication includes those on board. It is respectfully submitted that under the decisions of this court in the interpretation of treaties no implications may be indulged to include within the terms of the treaty things not within its express language and words. Citations, *supra.* Moreover, reading the word "vessel" and said phrase together does not by express words or implication include those on board. It is perfectly consistent that the vessel, including the crew, which must be necessarily brought in with the vessel, might be brought in for adjudication as to the vessel alone. That this necessarily includes the cargo, and no provision is made by the treaty for the disposition of the cargo, does not militate against the court according the words in this treaty their legal signification without including therewith by implication other matters. It is the duty of the officers and crew under its articles to stay with the vessel. It is for the interests of the United States Government in seizing these vessels that the crews remain upon them, to care for the cargo and the vessel while being detained, and in case of release to return it to the point whereat it was seized and to continue thereupon in accordance with their articles of employment. That said section does

not include the cargo within the term "vessel" is also obvious, unless we include the same by implication. The fact that the disposition of the cargo is not provided by the treaty militates not against the application of the well-established rules of treaty construction to the words found therein.

The cargo, in case it is not included within the term "vessel," would necessarily be brought in with the vessel, be cared for by the officers and crew during the pendency of proceedings for adjudication of the vessel and thereafter be taken out by the vessel, if forfeiture is denied. Or if forfeiture is decreed, be placed in bond subject to the assertion of any rights of the owners thereto or other disposition in accordance with the law. Omissions from this treaty of provisions aidful in the solution of incidental situations should not be held to militate against the application thereto of the well settled rules of statutory construction applied to the words of the treaty, without adding thereto by reading into the treaty words not there or by implication.

Assuming, however, that sub-division 2 of Article II may be construed as referring to and including those on board, another insuperable objection is presented by this record in that those on board were not when brought in to the jurisdiction of the court "adjudicated" in accordance with the laws "prohibiting the importation of alcoholic beverages." The only law upon our statute books "prohibiting the importation of alcoholic beverages" is the National Prohibition Act. It is not an "adjudication in accordance with" the laws of the United States "prohibiting the importation of alcoholic beverages" by adjudicating in accordance with the conspiracy laws, Section 37, of the

Criminal Code. To hold that the words quoted would include Section 37 of the Criminal Code is to read into this treaty express words so effective. The treaty speaks of a single class of laws expressly therein referred to, those "*prohibiting* the importation of alcoholic beverages."

Adjudication, according to the dictionary definitions, means: "Judgment; decree; sentence; the act of giving judgment or pronouncing sentence or a decree; a settlement of judgment; decree or sentence." Kinney's Dictionary and Glossary, "Adjudication." "In accordance with," in its broadest sense, means: "Not repugnant to," "not in conflict with," or "not inconsistent with." This definition is given in City of Norfolk v. Norfolk Landmark Publishing Co., 95 Va. 564, in construing the term "in accordance with the constitution and laws of the state."

So that, if the words "adjudication in accordance with" are to be given their legal interpretation or effect, they require that no judgment herein be rendered; that no adjudication herein be had of the vessel inconsistent with that provided in the National Prohibition Act, and, if those on board are included within the purview of sub-Section 2, that no sentence be pronounced upon them inconsistent with or in conflict with those sentences provided for the offenses of which the particular defendants are charged by virtue of the terms of the National Prohibition Act.

Conceding for the purposes of argument that the treaty provision in its strict application requires only that any statute which provides different or greater sentences is without the treaty and confining the objection to the fact that the sentences imposed in the particular cases are greater than those provided in the

National Prohibition Act, it will be found that the sentences imposed upon Ford, Harris and Evelyn, as master and officers of the vessel *Quadra* are in some instances four times as great as those provided by the prohibition laws and in all instances much greater than the same. (National Prohibition Act, Section 29. (41 Stats. 316.)

The enforcement of our National Prohibition Act under this treaty does not call for proceedings so entirely in violation of the terms of this treaty. There is in the record in this case a reference to another indictment of these defendants pending in the same United States District Court. That indictment is a published record and may be with propriety referred to here as an indictment of these defendants under the National Prohibition Act. Jurisdiction was secured for the purposes of that indictment by this seizure. If convicted under that indictment, sentence would be administered upon these defendants, if they are included within Section 2, in harmony with the treaty. Obviously, the sentences herein imposed upon them are not in harmony with the treaty. There has not, therefore, been, conceding that the treaty includes those on board, an "adjudication in accordance with" the laws "prohibiting the importation of alcoholic beverages" into the United States. This objection goes to the jurisdiction of the persons of these defendants which not only was excepted to throughout this record but which may at any time and in any court be timely asserted with legal effect.

The gross abuse and breach of our treaty stipulations with Great Britain by applying Section 37 of the Criminal Code in treaty cases of this class is clearly shown by the facts of this case. Hereinbefore we have

shown by this record that neither the vessel nor, if you please, "those on board at the time of seizure, had committed or were committing or attempting to commit an offense against the laws of the United States * * *, its territories or possessions *prohibiting the importation of alcoholic beverages,*" which alone can be done by bringing or attempting to bring or having brought liquors *across and within the three-mile zone limit.* Under the decision of this Court in Cunard S. S. Co. v. Mellon, there can be no violation of Section 3 of the National Prohibition Act "*prohibiting* the importation of alcoholic beverages" save by actually bringing or attempting to bring them across and within the three-mile limit. We, therefore, here have a case wherein, without any violation past or present of the National Prohibition Act, or the laws of the United States prohibiting the importation of alcoholic beverages, or an attempt so to do, the crew of a British ship was seized and brought into the jurisdiction of the United States and adjudicated under the conspiracy statutes of the United States, whereas neither the vessel nor those on board have ever violated or attempted to violate the National Prohibition Act. The situation necessarily results from the different character of crimes denounced by the two Acts, the Conspiracy Statute and the National Prohibition Act. The National Prohibition Act cannot be violated nor can an attempt be made to violate the same save by crossing or attempting to cross into the three-mile limit. The conspiracy statute is complete without consummation of the Criminal Act conspired to be done. Wherefore, it must in cases like this frequently, if not uniformly result, that without any violation whatsoever of the National Prohibition Act as required by the treaty or without any

cause whatsoever for belief that such had been done or was being done or attempting to be done by vessel or crew necessary in order to warrant seizure and give jurisdiction to our courts of the persons so seized under the treaty prosecution be had, guilt may be established and sentence be given under the conspiracy statute. In other words proceeding in such cases under the conspiracy statute may result in sentence for a crime stipulated in the treaty to be in accordance with our prohibition laws when in fact no crime is being, has been, or has been attempted to be committed under the prohibition laws.

We can find no warrant for such an incongruous result in the courts or any reasonable implication attendant upon this treaty if indulged.

Without doubt when the pourparlers sat in conference upon this subject they had before them the National Prohibition Act only; conferred, agreed and stipulated with reference to that alone, and did not have before them or in contemplation the Criminal Code, or Section 37 thereof, imposing sentences many times more severe than those of the act referred to in the treaty.

The treaty presents no objections to the view that all intended thereby is, that if after such an investigation as provided in Section 1 of Article II, there is therefrom found reasonable cause for belief that the *vessel* had committed or was committing or was attempting to commit an offense against the part Prohibition Act of the United States prohibiting importation then the vessel and it alone should be seized as the subject of, and the whole subject of, any and all penalties which thereafter might be adjudicated for an ascertained violation of our laws "prohibiting the im-

portation of alcoholic beverages." The plain, unmistakable meaning of the words and phrases employed in the treaty leads to that and no other conclusion. An Admiralty adjudication as to the vessel alone is intended in case the vessel, a personality, is found on adjudication to have violated laws of the United States "prohibiting the importation of alcoholic beverages." For, in the last analysis, it must be borne in mind that an actual violation, or attempted violation, of the laws prohibiting the importation of alcoholic beverages must be found in order to adjudicate forfeiture of the vessel. The words and language of the treaty sustain no other conclusion unless we read into the treaty other words. While it has been suggested that the visitation of such a penalty alone would not have commensurate effect in putting an end to rum running, nevertheless, it does not seem unreasonable to assume, in the construction of this treaty, that the pourparlers believed that if all rum running vessels were seized and forfeited there would be no violations of our laws prohibiting the importation of alcoholic beverages. There would seem to be no inconsistency in this view wrought by the provisions of Section 1 of Article II. No complete search to ascertain the purposes for which the vessel was being used or about to be used could be had without a search of all those on board including the officers and crew and others. Those on board of such ships ordinarly are agents of the owners of the ships. It is therefore not unreasonable to make the ship liable for their acts in "endeavoring to import or of having imported alcoholic beverages." The most that might be said is that the investigation authorized under Section 1 of the treaty was unrestrictedly thorough. But however that may be,

with all the subjects in mind, the vessel, crew and all others on board, the sole and only ground required for seizure was that the vessel was, had or was attempting to violate our laws prohibiting the importation of alcoholic beverages, that therefore the vessel and that alone should be adjudged in Admiralty, and, if found guilty, forfeited.

This treaty is in all aspects on all fours with the treaty of 1842 between the United States and Great Britain, the subject of decision in United States v. Rauscher, 119 U. S. 407. Nor does it in any material particular differ from the numerous extradition treaties presently in force between the United States and other nations. The most marked difference is immaterial. The treaty of 1842, like most extradition treaties, provided that a magistrate should, upon a prescribed investigation, issue warrant for the turning over of the particular individual that he might be brought into the jurisdiction of the United States for trial for specified offenses. This treaty provides that if a member of the Coast Guard, after prescribed investigations, should have reason to believe that the ship, and for the purposes of this argument, those on board, have been guilty of or had attempted or were attempting certain prescribed offenses, to wit, violating the laws prohibiting the importation of intoxicating liquors into the United States those on board, for purposes of argument, might be seized and brought into the jurisdiction of our courts for trial for the offenses prescribed by that provision of the National Prohibition Act prohibiting the importation of intoxicating liquors into the United States.

These subjects of Great Britain were seized by virtue of that treaty and brought into the jurisdiction

of our courts. They were then under color thereof put upon trial for an offense the punishment of which is much greater than any prescribed for the offense denounced by our prohibition laws. Obviously, from the time of their seizure until now they had no opportunity to return to their native land, for they ever since have been and now are in the custody of the United States, constructive or actual. (Government brief, p. 4.) The cases are exactly parallel. These defendants have been put upon trial for an offense vastly different from any denounced by the prohibition laws of the United States for the illegal acts alleged to have been committed by them providing punishment vastly different from that prescribed by the Criminal Code, Section 37.

Their case is an exact parallel with the United States v. Rauscher.

While it is claimed by the Government that no due exceptions were taken registering this objection at the trial the record contains exceptions by them in the demurrer to the jurisdiction of the court over the persons of these defendants and in the assignments of errors below. Likewise, in the petition for a writ of Certiorari filed in this court, specifying the errors of the Circuit Court of Appeals, the same was and is included. Regardless, however, of whether such objection was taken, the point may be raised at any time. The question is one of jurisdiction of the person. In the United States v. Rauscher, 119 U. S. 407, at page 433, this court, speaking of the identical question, said:

> "Under the views we have taken of the case the jurisdiction of the court to try such an offence, if the party himself was properly within its jurisdiction, is not denied, but the facts relied upon go to show that while the court did have jurisdiction

> to find the indictment, as well as of the questions involved in such indictment, it did not have jurisdiction of the person at that time, so as to subject him to trial. The question therefore is immaterial."

It would not seem improper to call the attention of this Honorable Court to the fact that if the defendants, Ford, Harris and Evelyn, can be brought into the jurisdiction of the United States for trial upon this offense by this treaty, Great Britain here has consented to a treaty whereby her own subjects can be brought into the United States for trial upon offenses never before permitted by any extradition treaty between that and this country. It has never been the policy of Great Britain to permit extradition therefrom for any minor offenses, even of citizens of the United States claiming asylum therein. That she would permit extradition of her own subjects to the United States for trial for these minor offenses when these minor offenses were not offenses under the laws of Great Britain, seems beyond any intention as manifested by the treaties with Great Britain and every nation of the earth from the commencement of time to date.

One of the important issues raised in this case, discussed in the briefs, but very little in the oral arguments, is whether or not a vessel standing beyond the three-mile limit can be held to violate the National Prohibition Act by unloading into boats *not her own,* as distinguished from sending liquors within the jurisdiction of the United States by *her own boats.* (Government brief pages 11-12.) The question is in this proceeding by reason of the fact that it is here determinative of whether or not the "vessel" *Quadra* was "importing or endeavoring to import liquors into the

United States'' within Section 2 of the treaty. It appears without contradiction that the *Quadra* in no instance sent or attempted to send her own boats or any member of her crew across the three-mile limit. The question as raised by the treaty is not whether she thereby violated *some* law of the United States, but whether or not she thereby violated that part of the National Prohibition Act "*prohibiting* the importation of alcoholic beverages," it being legal for her to stand beyond the three-mile limit from our shore laden with intoxicating liquors under the decision of this court in Cunard S. S. Co. v. Mellon, *supra*. The Government contends that the *Quadra* violated the *National Prohibition Act* by unloading into boats other than her own while standing beyond the three-mile limit. Petitioners contend that unless the *Quadra* sent liquor over the three-mile limit into the United States by *her own boats* or by part of her own crew accompanying boats not her own, she did not and does not violate the National Prohibition Act.

Perhaps no question raised by this record is of greater moment in this class of cases today than is this.

In the *Grace and Ruby,* 283 Fed. Rep. 276, the vessel came within the three-mile limit by its own boats and she was held liable to forfeiture. In the *Henry L. Marshall,* 292 Fed. Rep. 489, the vessel did not come within the three-mile limit with its own boats but did with boats other than her own and was held liable to forfeiture. The British Government protested the last decision.

The Government cites the statement by Secretary of State Hughes immediately after the completion of this treaty in support of its position. The statement

does not seem to be intended to declare whether or not the treaty settles this issue. To determine that we must look to the terms of the treaty alone and not to the declaration of any of its pourparlers.

It will be noted that the British Government protested the seizure of the *Henry L. Marshall* under the circumstances thereof, but that the protest was subsequently withdrawn when the *bona fides* of that as a British vessel became apparent. See statement of Secretary Hughes in brief for the petitioners, page 29.

It is respectfully submitted that the employment in the treaty, Section 2, of the word "vessel" alone concluded this question by the treaty *thereby* providing that a vessel sending in cargoes to our shores by boats other than its own did not violate our prohibition laws. Plainly, from the aforesaid statement of Secretary Hughes, the facts of the *Henry L. Marshall* case were before the pourparlers for adjustment. It was, in fact, the principal subject of controversy and difference at their conferences. The employment, however, of the word "vessel" as in the first part of Section 2 of the treaty, as the personality that "has committed or is committing or attempting to commit an offense," includes only the vessel and its own boats and not other boats than those a part of the equipment of the vessel, is well settled by this court, which, in the Manila Prize Cases, 183 U. S. 254-268, thus defines that word:

> "What is included then by the term a 'ship or vessel of war' under section 4635? Whatever the toleration extended in courts of admiralty to the use, in practice, of words apparently superfluous, the word 'ship' embraces *her boats,* tackle, apparel, and appurtenances because part of the ship as a going concern, and, for the same reason,

'ship or vessel of war' include her armament, searchlights, stores, everything, in short, attached to or on board the ship in aid of her operations."

That a "vessel" is not an inanimate thing as set forth in the Government's brief, but a personality capable of *per se* action is succintly set forth in the decision of this court in Tucker v. Alexandroff (183 U. S. 424) at page 438, wherein this court said:

'A ship is born when she is launched, and lives so long as her identity is preserved. Prior to her launching she is a mere congeries of wood and iron—an ordinary piece of personal property—as distinctly a land structure as a house, subject only to mechanics' liens created by state law and enforcible in the state courts. In the baptism of launching she receives her name, and from the moment her keel touches the water she is transformed, and becomes a subject of admiralty jurisdiction. She acquires a personality of her own; becomes competent to contract, and is individually liable for her obligations, upon which she may sue in the name of her owner, and be sued in her own name. Her owner's agents may not be her agents, and her agents may not be her owner's agents. The China, 7 Wall. 53; Thorp v. Hammond, 12 Wall. 408; Workman v. New York City, 179 U. S. 552; The Little Charles, 1 Brock. 347, 354; The John G. Stevens, 170 U. S. 113, 120; Homer Ramsdell & Co. v. Comp. Gen. Trans., 182 U. S. 406. She is capable, too, of committing a tort, and is responsible in damages therefor. She may also become a quasi-bankrupt; may be sold for the payment of her debts, and thereby receive a complete discharge from all prior liens, with liberty to begin a new life, contract further obligations, and perhaps be subjected to a second sale."

The employment of the word "vessel," therefore, as the result of the differences between the pourparlers, which, by its legal interpretation by this court, includes only the vessel and its own boats or equipment for the purposes of the voyage, definitely settles that the United States yielded in this controvrsy to the British contentions which were in accord with international law for more than a century; and, by the treaty confined such offenses to acts of the vessel and its *own boats* and equipment and did not extend it to shore contact by *other* boats.

The fact that the British government has not protested the seizure of British subjects by the United States as claimed by the government does not afford a sound reason from which to conclude that the government deemed them within the terms of the treaty. The protests of the British government set forth in the government's brief (pages 18, 19) do not support that proposition. They requested only expedition of decision. The decision in both of those cases was reversed. No doubt the British government concluded all that was necessary in those cases was to secure decision of the higher courts. So in all other similar cases, as in this, it would seem to be a matter of great delicacy for the British or any other interested government to express its *legal* views concerning a matter pending in our courts. That government probably preferred to await final decision of our highest courts and particularly this Court for an interpretation of the treaty and then to avail itself of the right to propose modifications to meet such decisions as by said treaty, Article V, provided, the proposal of which by the terms of the treaty if not accepted by our government would terminate the same.

The position here taken by petitioners was taken by the British government and acceded to by the United States in reference to the treaty between Great Britain and the United States of May 22, 1924. That treaty provided that in case of blockade runners the "vessel" and "cargo" might be seized and forfeited. It was maintained by the British government in a specified instance that such did not include the officers and crew and they were accordingly released.

Brief for Petitioners pages 48, 49. Moreover, this being a self-executing treaty and, therefore, a municipal law of the United States, petitioners have therein personal rights cognizable by our own courts. The fact that the government of which they are subjects does not protest their cause, does not estop them from asserting their rights under the treaty in our courts and does not change or modify the rules of construction applicable to such treaties in adjudicating their rights.

It is important to note that the contention of the Government that this treaty is intended to extend seizure and adjudication to include the master and crew is negatived by the fact that officers of the United States would thereby be required to elicit and seize evidence from persons thereafter to be used against them in a prosecution under our criminal laws, in violation of the Fifth Amendment to the Constitution, thereby making the method of search provided in section 1 of the treaty fruitless of its purposes. It does not seem reasonable to presume that the treaty provides a means for its own defeat. It does not seem possible that this treaty should be applied by exercising Article I thereof to make the defendants produce evidence against themselves to be used thereafter in our courts for their

prosecution, and, after such conviction as here they be given felony sentences four times as great, in instances, than that stipulated in our agreement with Great Britain for this privilege of their seizure and adjudication.

This vessel, being a British ship, is territory of Great Britain. Thereupon its officers and crew are upon British territory. It is their *home*. Thereupon they dwell and live and perform such duties as are by their articles required. When, therefore, a British vessel is seized under this treaty, the Articles of agreement of the master and crew require that they remain with the vessel to preserve and repair the vessel, man the same, protect its properties, its cargo, and any others and all on board. To leave the same willingly is to desert, punishable by severe penalties. These Articles require that they stay with the ship until its return to the point of departure. It is, therefore, their duty under their articles of employment in case of release of the ship to return it from the point of release to its home. Manifestly the master and crew are in a much better position to do this than others. Manifestly our Government did not contemplate, that in case of release and as is the custom and necessary the return of the ship to the point of seizure, that our Government itself would set the ship and cargo adrift or that it would employ officers and crews therefor but that it should be manned by the master and crew already signed for that purpose, known capable of returning and the only persons legally authorized to return the ship to its point of departure. Our Government is not empowered to do this. The master and crew were under articles of agreement bound to do this. Wherefore, it is apparent that the presence of the crew upon the ship and the *physical* necessity of taking them in when

the ship is seized is no argument that they were intended to be included within the seizure and adjudication. On the contrary, it is for the best interests of all concerned that they remain free to perform and that they do perform their agreed duties at all times, of course, while the ship is in custody, under the surveillance of our Government officials.

That a power, based solely on an implication that the word "vessel" includes the master and crew thereof and other implications herein asserted, is properly exercised to seize the master and crew in their homes on British territory, the ship, throw them into jail and pronounce upon them felony judgments and imprisonment because it might be deemed necessary in efficacious prohibition enforcement, it is confidently asserted will never receive the approval of this Honorable Court.

To sustain its contentions herein, the Government is driven to the necessity of reading into Section 2 of this treaty the words "other persons," of reading out of that section the words "laws" * * * "prohibiting the importation of alcoholic liquors," of reading into the treaty in lieu of the latter phrase the words "Section 37 of the Criminal Code of the United States," contrary to numerous decisions of this court (such as Leavenworth, etc. R. R. Co. v. United States, 92 U. S. 733, stating "Treaties, like statutes, must rest on the *words* used—*nothing* added thereto, *nothing* diminishing"); and, by necessarily invoking *implications* which this court has uniformly held, by reason of a treaty law being an international contract, can not in honor be done. (Leavenworth, etc. R. R. Co. v. United States, 92 U. S. 733: "—it is manifestly

not desirable to extend them" (treaties) "by *any* implications * * *."

In other words the government here relies not upon *this* treaty and its words as written but upon *another* treaty, of different words and phrases, a shadow treaty, uncertain, intangible, unascertainable, and variable according to the caprice of the particular officers executing the same, all of which time and time again has been inhibited by the decisions of this court and which produces results in gross violation of our treaty contract with a great and friendly power without consultation therewith or agreement therefor; whereas, Article VI of the treaty shows it was therein *agreed* that any proposed variations of the treaty as written should only be, as therein provided, after due proposals in writing, consideration thereof by the signatory powers and approval, express or implied.

It is most earnestly and respectfully submitted to this Honorable Court that in interpreting this treaty, whereby a friendly nation has voluntarily sought to aid our country in the execution of a law otherwise difficult if not in this particular impossible of substantial enforcement, and to that end submitted to our officers the right to seize her vessels (necessarily taking therewith her subjects) on the high seas and beyond the jurisdiction of the United States and invested our courts with jurisdiction for the determination of the rights of her subjects, for acts denounced as crimes in the United States but not in Great Britain, that our national honor, trust and confidence bespeak a scrupulous adherence to the words and letter of the grant without reading words into the same nor extending the same by implication contrary to a long line of decisions by this court to effect some supposed pur-

pose not within the words of the treaty as judicially defined by this court. In the view that this treaty, by Article VI thereof, expressly contemplates and provides for possible delinquencies therein or omissions therefrom in the accomplishment of its purpose, and thereby provides a method of swift amendment and modification, it is respectfully submitted to this Honorable Court that the purposes of the treaty will be better subserved by that method of perfection of an obviously presently imperfect agreement and that its purpose will be better subserved by that method, after discussion and agreement by the signatory powers; whereas, any extensions of this treaty by implication or construction without discussion and agreement might result in its revocation and total defeat of its intended purpose.

It is, therefore, respectfully submitted:

(1) That the District Court below did not have jurisdiction of the persons of Ford, Harris and Evelyn either for trial or for the rendition of the sentences shown by this record to have been upon them imposed.

(2) That the evidence seized upon the ship *Quadra* and introduced over the objection of Belanger and Quartararo also, at the trial, was not admissible, for the reason that such evidence seized by virtue of the treaty was admissible solely and only in the trial of the defendants for violations of that portion of the National Prohibition Act prohibiting the importation of alcoholic beverages, and not in a trial for conspiracy, the particular treaty provisions of search and seizure being by the law confined solely and only for adjudications

according to that part of the prohibition laws of the United States, prohibiting the importation of intoxicating liquors.

Respectfully submitted,

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